Supreme Court, U.S.
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No. 06-146

IN THE

Supreme Court of the United States

TONY L. WARE,

Petitioner,

v.

FLEETBOSTON FINANCIAL CORPORATION,
fka BANKBOSTON CORPORATION,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

BRIEF IN OPPOSITION

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QUESTIONS PRESENTED

1. Whether this Court should accept Petitioner's invitation to abandon the narrow interpretation of the *Rooker-Feldman* doctrine set forth only last year in *Exxon Mobil Corp. v. Saudi Basic Indus. Corp.*, 544 U.S. 280 (2005), and determine whether *Rooker-Feldman* is a comprehensive bar to the removal from state court of every case in which the state court has entered a judgment, regardless of whether the judgment was procured by fraud, is a final judgment, and the extent to which the removed lawsuit seeks appellate review of the judgment in federal court.

2. Whether this Court should review the Eleventh Circuit's determination under state law that a corporate defendant, which has been dissolved, remains amenable to suit and therefore has standing to remove to federal court a lawsuit brought against it.

3. Whether this Court should exercise certiorari jurisdiction to interpret state corporation law and determine whether the removal of a lawsuit to federal court by a corporate defendant, which has been dissolved, is "moot."

LIST OF PARTIES AND CORPORATE DISCLOSURE STATEMENT

Petitioner is Tony L. Ware. Respondent is FleetBoston Financial Corporation, which is a dissolved corporation originally organized under the laws of Delaware. T.L. Ware Bottling Company, Inc. was a party to the proceedings below.*

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* Petitioner Tony L. Ware purports to petition this Court on behalf of himself and T.L. Ware Bottling Company, Inc. (Pet. 1), but he is not an attorney licensed to practice before this Court. For this reason, he cannot represent T.L. Ware Bottling Company, Inc. before this Court, and no petition on behalf of T.L. Ware Bottling Company, Inc. properly is pending. *See* S. Ct. R. 9; *see also Rowland v. California Men's Colony, Unit II Men's Advisory Council*, 506 U.S. 194, 201-02 (1993) ("It has been the law for the better part of two centuries, for example, that a corporation may appear in the federal courts only through licensed counsel.").

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SUMMARY OF REASONS FOR DENYING THE PETITION

Petitioner Tony L. Ware ("Ware") has presented no compelling reason for this Court to exercise certiorari jurisdiction in this case. *See* S. Ct. R. 10. Ware presents three issues to the Court in his petition for writ of certiorari: the applicability of the *Rooker-Feldman* doctrine in this case; whether Respondent FleetBoston Financial Corporation ("FleetBoston") was amenable to suit under state corporation law and therefore had standing to remove the case to federal court; and whether the removal of the case was "moot" because FleetBoston had been dissolved. With respect to the standing and mootness issues that his petition presents, Ware does not even attempt to show that the resolution of these issues below conflicts with the decisions of this Court or evidences a circuit split. To the contrary, Ware simply contends that this Court never has addressed the specific standing and mootness issues presented in this case and that it therefore should do so. (Pet. 28)

With respect to *Rooker-Feldman*, Ware contends that the Eleventh Circuit's resolution of this question conflicts with its own precedents and the decisions of six other courts of appeals. (Pet. 6-8) The intra- and inter-circuit splits that Ware suggests, however, are illusory. Most of the cases on which Ware relies were decided before this Court clarified the scope of the *Rooker-Feldman* doctrine in *Exxon Mobil Corp. v. Saudi Basic Indus. Corp.*, 544 U.S. 280 (2005), and, as such, do not indicate that a circuit split exists today. Moreover, the cases to which Ware points are distinguishable from this case. Ware has identified no conflict between the Eleventh Circuit's *Rooker-Feldman* holding in this case and any decision of a court of appeals. Ware fails to show a compelling reason for granting the petition. For these reasons, the petition should be denied.

STATEMENT OF THE CASE

A. Proceedings in State Court

FleetBoston is a Delaware corporation that at one time was registered to do business in Georgia but withdrew its registration and was dissolved in July 2004. (Pet. App. 27) Ware is a serial litigant whose abusive and frivolous litigation tactics are known to Georgia courts.[1] (Pet. App. 39-40) In December 2004, Ware and T.L. Ware Bottling Company, Inc. ("Ware Bottling") filed suit against FleetBoston in the Superior Court of Fulton County, Georgia, alleging that FleetBoston was responsible for the purportedly wrongful repossession more than ten years earlier of a car leased to Ware. (Pet. App. 26-27)

On December 10, 2004, Ware attempted to serve FleetBoston with process by certified mail. (Pet. App. 27) The mailing, however, was incorrectly addressed, and the Postal Service returned it, marked "addressee unknown," to Ware on December 20. (Pet. App. 27) Ware nevertheless executed an affidavit of service of process only three days later, attesting under oath that he had personally served FleetBoston with process on December 10. (Pet. App. 27-28) This affidavit subsequently was filed with the superior court. (Pet. App. 28) On January 27, 2005, Ware also filed a certificate of default with the superior court, in which Ware again attested under oath that FleetBoston had been served with process and was in default. (Pet. App. 28)

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1. *See also Ware v. Vaughn*, 225 Ga. App. 303, 483 S.E.2d 698, 700 (1997) ("[W]e find this appeal and the entire appeal procedure used by Ware to be wholly and egregiously frivolous and abusive, and we find that the appeal has been litigiously pursued for the purpose of harassment. . . .").

On January 28, a proposed "consent" order was presented to Judge Gino M. Brogdon, who was serving as the presiding superior court judge for the week. (Pet. App. 28) Although the proposed order recited that all parties had agreed to its terms, it was signed only by Ware and his attorney. (Pet. App. 28) Judge Brogdon signed the order, which awarded Ware a default judgment against FleetBoston for more than $922 million. (Pet. App. 28) On February 2, Judge Bensonetta Tipton Lane, the superior court judge to whom the case was assigned, *sua sponte* vacated Judge Brogdon's default judgment and set the default issues for hearing. (Pet. App. 28) The following day, Judge Lane's chambers also mailed to FleetBoston copies of Judge Brogdon's default judgment and Judge Lane's order vacating the default judgment. (Pet. App. 29) FleetBoston first learned of Ware's lawsuit when it received the materials mailed from Judge Lane's chambers. (Pet. App. 29, 34)

Before FleetBoston learned of the lawsuit, however, another proposed "consent" order was presented on February 7 to Judge Jerry W. Baxter, who then was serving as the presiding judge for the week. (Pet. App. 28) This proposed order recited that all parties had consented to its terms, but it again was signed only by Ware and his attorney. (Pet. App. 29) When the proposed order was presented to Judge Baxter, he was told that *all* parties – both plaintiffs and the defendant – had agreed to the order. (Pet. App. 29) Based on these representations, Judge Baxter signed the order without first reviewing it. (Pet. App. 29) This order vacated Judge Lane's order and reinstated Judge Brogdon's default judgment. (Pet. App. 28) The next day, Ware filed a notice of appeal from the default judgment.[2] (Pet. App. 29)

2. The district court surmised that Ware's attempt to appeal a default judgment that he (or his counsel) prepared and that granted him all the relief he sought likely was an effort to divest Judge Lane of jurisdiction, lest she vacate the order that was fraudulently procured from Judge Baxter. (Pet. App. 29)

Ware never paid the mandatory appellate costs, however, and he failed to perfect the appeal.[3] (Pet. App. 29)

B. Proceedings in the District Court

FleetBoston filed a notice of removal on February 15, removing Ware's lawsuit to the United States District Court for the Northern District of Georgia. (Pet. App. 30) In district court, FleetBoston filed a motion pursuant to Fed. R. Civ. P. 60(b) to set aside the fraudulent default judgment. (Pet. App. 25, 30) FleetBoston also filed motions pursuant to Fed. R. Civ. P. 12(b) to dismiss the lawsuit for lack of personal jurisdiction, insufficiency of process, and failure to state a claim upon which relief can be granted. (Pet. App. 25, 30) Ware, on the other hand, filed a motion to remand the case to state court.[4] (Pet. App. 25, 31) As grounds for the motion to remand, Ware argued, among other things, that removal of the case was untimely, that FleetBoston lacked standing to remove the case because it was not authorized at the time of removal to do business in Georgia, that FleetBoston could not remove the case from superior court because Ware's notice of appeal divested the superior court of jurisdiction before a notice of removal was filed, and that the district court lacked subject-matter jurisdiction. (Pet. App. 31-32) Ware did not respond to the motions that FleetBoston filed. (Pet. App. 32)

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3. Affidavits of clerks of the superior court and state supreme court, which were filed below, confirmed that no appeal was pending at the time FleetBoston removed the case to federal court. (Pet. App. 35)

4. In support of this motion to remand, Ware filed with the district court another affidavit of service of process, which again misrepresented that FleetBoston had been served with process on December 10, 2004 by certified mail. (Pet. App. 31)

The district court denied Ware's motion to remand. (Pet. App. 41) In its order, the district court characterized Ware's arguments in support of the motion to remand as "frivolous" (Pet. App. 32), and it held that:

- FleetBoston never was properly served with process, and it did not receive a copy of Ware's pleadings until February 8, 2005. Accordingly, the notice of removal that FleetBoston filed on February 15 was timely. (Pet. App. 33-34)

- FleetBoston could remove the case notwithstanding that it was not authorized at the time of removal to do business in Georgia. The district court noted that Georgia law expressly provides that a foreign corporation's failure to obtain a certificate of authority does not prevent the corporation from "defending any proceeding in this state." (Pet. App. 35-36 (citing O.C.G.A. § 14-2-1502(d))

- Ware's notice of appeal did not bar removal. Based on the affidavits of personnel in the superior court clerk's office and the clerk of the Georgia Supreme Court, the district court concluded that no appeal was pending at the time the case was removed. And the district court held that an appeal does not necessarily bar timely removal in any event. (Pet. App. 35)

- The district court properly could exercise original jurisdiction under both the federal question jurisdiction statute, 28 U.S.C. § 1331, and the diversity jurisdiction statute, 28 U.S.C. § 1332. The district court's exercise of federal question

> jurisdiction was premised on the federal questions presented by Ware's claims against FleetBoston for violations of the Racketeer Influenced and Corrupt Organizations Act, 18 U.S.C. § 1961 *et seq.*, and the Trade Secrets Act, 18 U.S.C. § 1832. The district court's exercise of diversity jurisdiction was based on the diverse citizenship of the parties and the amount put in controversy by Ware's claims against FleetBoston. (Pet. App. 35)

The district court granted FleetBoston's motion to set aside the default judgment and dismissed the lawsuit for failure to state a claim.[5] (Pet. App. 36, 41) The district court also concluded that the frivolous pleadings filed by, and abusive litigation tactics employed by, Ware and his attorney warranted the imposition of sanctions. (Pet. App. 38)

C. Proceedings in the Eleventh Circuit

Ware appealed to the Eleventh Circuit from the district court's denial of his motion to remand, the grant of FleetBoston's motion to set aside, and the dismissal of his lawsuit. (Pet. App. 44) On appeal, Ware argued, among other things, that the *Rooker-Feldman* doctrine barred the district court's exercise of jurisdiction in this case and that FleetBoston did not have capacity to remove the case because it had been dissolved. (Pet. App. 44) A panel of the Eleventh Circuit rejected Ware's arguments and unanimously affirmed. (Pet. App. 51)

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5. After the district court denied Ware's motion to remand and granted FleetBoston's motion to set aside, Ware filed a motion in which he raised *Rooker-Feldman* for the first time. (Pet. 5) This motion also was denied (Pet. 5), but Ware did not appeal from its denial. (Pet. App. 44)

With respect to Ware's *Rooker-Feldman* argument, the Eleventh Circuit acknowledged this Court's recent decision in *Exxon Mobil Corp. v. Saudi Basic Indus. Corp.*, 544 U.S. 280 (2005), and noted that *Rooker-Feldman* applies only to cases in which a lower federal court is called upon to exercise *appellate*, as opposed to original, jurisdiction to review a state court judgment. (Pet. App. 48-49) The Eleventh Circuit also noted the well-settled notion that, when a case is removed, the district court is vested with authority to modify orders entered by a state court prior to removal to the extent that the case properly is within the district court's original jurisdiction. (Pet. App. 50) Applying these principles to this case, the Eleventh Circuit concluded that the district court "properly found that it could exercise original jurisdiction," pursuant to both the federal question and diversity jurisdiction statutes. (Pet. App. 50) As such, *Rooker-Feldman* did not apply "because FleetBoston was invoking the district court's original jurisdiction over the case and was not appealing the state court judgment." (Pet. App. 50) Concerning Ware's standing argument, the Eleventh Circuit held that state law authorized FleetBoston to defend itself in litigation notwithstanding its dissolution and lack of a certificate of authority to do business in Georgia. (Pet. App. 46)

REASONS FOR DENYING THE PETITION

A. This Court recently addressed the scope of *Rooker-Feldman.*

Ware's petition invites this Court to reconsider the scope of the *Rooker-Feldman* doctrine. (Pet. 13) Only last year, however, the Court did precisely that. In *Exxon Mobil Corp. v. Saudi Basic Indus. Corp.*, 544 U.S. 280 (2005), the Court identified "the limited circumstances" in which the doctrine applies, 544 U.S. at 291, and thereby clarified "the narrow ground occupied by *Rooker-Feldman.*" *Id.* at 284. Although previously the *Rooker-Feldman* doctrine had been "[v]ariously interpreted in the lower courts," *id.* at 283, the lower courts now regularly acknowledge that *Rooker-Feldman* is narrowly confined to the limited circumstances identified in *Exxon Mobil. See, e.g., McCormick v. Braverman*, 451 F.3d 382, 391-92 (6th Cir. 2006); *Turner v. Crawford Square Apartments III*, 449 F.3d 542, 547 (3rd Cir. 2006); *Coles v. Granville*, 448 F.3d 853, 858 (6th Cir. 2006); *Guttman v. Khalsa*, 446 F.3d 1027, 1031-32 (10th Cir. 2006); *Torromeo v. Town of Fremont*, 438 F.3d 113, 115 (1st Cir. 2006); *Davani v. Virginia Dep't of Transp.*, 434 F.3d 712, 713 (4th Cir. 2006). So soon after *Exxon Mobil*, there is no compelling reason for this Court to again address the scope of *Rooker-Feldman.*

Nothing in Ware's petition suggests otherwise. In an effort to manufacture a circuit split with respect to *Rooker-Feldman*, Ware cites eleven decisions of the First, Second, Sixth, Seventh, Eighth and Tenth Circuits that, he contends, conflict with the Eleventh Circuit's decision in this case. (Pet. 6-8) Ten of these decisions, however, predate *Exxon Mobil.* Even if these decisions were inconsistent with the

Eleventh Circuit's decision in this case, they were decided without the benefit of *Exxon Mobil*, and they provide no reason to believe that *Exxon Mobil* does not give the lower courts adequate guidance about the applicability of *Rooker-Feldman* in cases like this one. The eleventh decision cited by Ware makes only passing reference to *Rooker-Feldman* and was decided on other grounds. *See Baby C. v. Price*, 138 Fed. Appx. 81, 83-84 (10th Cir. 2005).

B. The Eleventh Circuit correctly held that *Rooker-Feldman* did not bar the removal of this case.

In any event, the Eleventh Circuit correctly decided in this case that the *Rooker-Feldman* doctrine did not bar the removal of Ware's lawsuit against FleetBoston. Indeed, the Eleventh Circuit's *Rooker-Feldman* decision below is perfectly consistent with the prior decisions of this Court concerning *Rooker-Feldman*, with the Eleventh Circuit's own precedents, and with the decisions of other courts of appeals. For these reasons, there is no compelling reason for this Court to exercise certiorari jurisdiction in this case.

1. The Eleventh Circuit's decision is consistent with this Court's precedents.

As this Court recognized in *Exxon Mobil*, application of the *Rooker-Feldman* doctrine is limited to cases in which a party invokes the jurisdiction of a lower federal court on the basis of a claim that it was wronged by a state court judgment and seeks relief from the judgment. *See Exxon Mobil*, 544 U.S. at 291 (*Rooker-Feldman* applies "when losing party in state court files suit in federal court complaining of an injury caused by the state-court judgment and seeking review and rejection of that judgment"). Put another way, *Rooker-*

Feldman simply prohibits a federal court – other than this Court – from exercising *appellate* jurisdiction to review the judgment of a state court. *See Verizon Md. Inc. v. Public Serv. Comm'n of Md.*, 535 U.S. 635, 644 n.3 (2002). Indeed, the two cases from which the doctrine acquired its name both involved lawsuits in which the basis for the lower federal court's exercise of jurisdiction was a claim that a state court judgment itself was unconstitutional. *See Rooker v. Fidelity Trust Co.*, 263 U.S. 413, 414-15 (1923) ("The grounds advanced for resorting to the District Court are that the judgment was rendered and affirmed in contravention of [the federal constitution]."); *District of Columbia Court of Appeals v. Feldman*, 460 U.S. 462, 469, 472-73 (1983) (plaintiffs brought suit in federal court alleging that District of Columbia court's denial of their applications for bar admission waivers violated the federal constitution and federal antitrust law). *Exxon Mobil* confirmed that the doctrine is confined to cases like *Rooker* and *Feldman*. *See Exxon Mobil*, 544 U.S. at 284.

This case is distinguishable from *Rooker* and *Feldman*. The district court's exercise of federal question jurisdiction in this case was premised on the federal questions presented by Ware's claims against FleetBoston for violations of various federal statutes. (Pet. App. 35, 50) Likewise, the district court's diversity jurisdiction was based on the diverse citizenship of the parties and the amount put in controversy by Ware's claims. (Pet. App. 35, 50) Unlike the claims in *Rooker* and *Feldman*, none of Ware's claims against FleetBoston – the very claims upon which the district court premised its exercise of jurisdiction – were based on any judgment entered by a state court, and none sought relief from any state court judgment. This case fell squarely within the original jurisdiction of the district court, and its removal is not inconsistent with any decision of this Court concerning *Rooker-Feldman*.

Ware's real complaint is not that this case was removed to federal court, but that the district court set aside the default judgment for more than $922 million that he fraudulently procured in state court. This Court never has suggested, however, that *Rooker-Feldman* precludes a district court in a properly removed action from revisiting an order entered by the state court before removal. To the contrary, the Court specifically has acknowledged that, when a case properly is removed, the district court is vested with "authority to dissolve or modify injunctions, orders, and all other proceedings had in state court prior to removal."[6] *Granny*

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6. Moreover, this Court has suggested that the finality of a state court judgment is a necessary, but not sufficient, prerequisite to application of *Rooker-Feldman*. *See Exxon Mobil*, 544 U.S. at 291 (noting that in both *Rooker* and *Feldman*, "the losing party in state court filed suit in federal court *after the state proceedings ended*") (emphasis added); *see also Lance v. Dennis*, 126 S. Ct. 1198, 1201 (2006) ("[U]nder what has come to be known as the *Rooker-Feldman* doctrine, lower federal courts are precluded from exercising appellate jurisdiction over *final* state-court judgments.") (emphasis added); *Feldman*, 460 U.S. at 476 ("The District of Columbia Circuit properly acknowledged that the United States District Court is without authority to review *final* determinations of the District of Columbia Court of Appeals in judicial proceedings.") (emphasis added). This is consistent with the statutory basis for *Rooker-Feldman*, 28 U.S.C. § 1257, which vests this Court with exclusive jurisdiction among the federal courts to undertake appellate review of "[f]inal judgments or decrees" rendered in state court.

At the time FleetBoston removed this case, the default judgment was not final, and Ware's filing of a notice of appeal without paying appellate costs and perfecting the appeal did not make it otherwise. *See American Flat Glass Distrib., Inc. v. Michael*, 260 Ga. 312, 392 S.E.2d 855, 855 (1990). FleetBoston timely could have moved the superior court to set aside the judgment, *see* O.C.G.A. § 9-11-60(f),

(Cont'd)

Goose Foods, Inc. v. Brotherhood of Teamsters & Auto Truck Drivers, Local No. 70 of Alameda County, 415 U.S. 423, 437 (1974). Ware's petition asks this Court to extend *Rooker-Feldman* in a way that would substantially limit the holding of *Granny Goose* and would repudiate the narrow construction given *Rooker-Feldman* just last year in *Exxon Mobil*.[7] Ware gives the Court no compelling reason, however, for doing so.

2. The Eleventh Circuit's decision is consistent with the Eleventh Circuit's own precedents.

Ware contends that this Court should grant certiorari in this case because the Eleventh Circuit's decision below conflicts with its own precedents, specifically *Martyak v. Martyak*, 2006 WL 466641 (11th Cir. 2006) (unpublished decision). But unlike this case, *Martyak* is a paradigmatic *Rooker-Feldman* case. In *Martyak*, the defendant removed the case to federal court on the ground that the state court had entered an unconstitutional alimony judgment. That is,

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(Cont'd)

and FleetBoston timely could have appealed the judgment to the state appellate courts. *See* O.C.G.A. § 5-6-38. That FleetBoston instead removed the case and moved the district court to set aside the judgment pursuant to Fed. R. Civ. P. 60 does not offend *Rooker-Feldman*.

7. Ware does not cite a single decision of this Court in which a district court properly exercised jurisdiction in a removed case but offended *Rooker-Feldman* by granting a motion to set aside. Although this Court has not addressed the issue in terms of *Rooker-Feldman*, it has held more than once that a district court properly may set aside or modify a state court default judgment after removal. *See, e.g., Harter v. Kernochan*, 103 U.S. 562 (1880); *French v. Hay*, 89 U.S. 238 (1874).

the defendant identified the state court's decision – not the original, underlying claims asserted against him – as the basis for the federal court's jurisdiction. As the Eleventh Circuit recognized, this amounted to an effort to secure *appellate* review of the state court's decision in federal court and is precisely what *Rooker-Feldman* forbids. *Martyak* is not at all inconsistent with the Eleventh Circuit's decision in this case.

3. The Eleventh Circuit's decision is consistent with the decisions of other courts of appeals.

Ware also contends that, with respect to *Rooker-Feldman*, the Eleventh Circuit's decision in this case conflicts with the decisions of other courts of appeals. In particular, Ware identifies eleven decisions in other circuits that, he asserts, conflict with the Eleventh Circuit's decision below. In three of the cases on which Ware relies, however, the court of appeals did not even decide whether *Rooker-Feldman* applied to bar a district court from exercising jurisdiction. These decisions make only passing reference to the scope of the doctrine and do not indicate a circuit split. *See, e.g.*, *Mills v. Harmon Law Offices, P.C.*, 344 F.3d 42 (1st Cir. 2003); *Freeman v. Burlington Broadcasters, Inc.*, 204 F.3d 311 (2nd Cir. 2000); *Baby C. v. Price*, 138 Fed. Appx. 81 (10th Cir. 2005).

The other decisions that Ware cites are distinguishable from this case. In *Anderson v. Charter Township of Ypsilanti*, 266 F.3d 487 (6th Cir. 2001), the claims that the plaintiff sought to submit to the district court required an evaluation of a state court judgment that, before the *Rooker-Feldman* issue was resolved by the Sixth Circuit, already had been affirmed by the state court of appeals. In *Taylor v. Federal*

Nat. Mortgage Ass'n, 374 F.3d 529 (7th Cir. 2004), the lawsuit removed to federal court sought damages and other relief from an allegedly wrongful state court foreclosure judgment. In *Auston v. North Carolina*, 1997 WL 312285 (7th Cir. 1997) (unpublished decision), a lawsuit was filed originally in federal court alleging that the plaintiff's federal constitutional and statutory rights were violated in state court proceedings to terminate the plaintiff's parental rights and seeking damages arising from the state court action. In *Downs v. Westphal*, 78 F.3d 1252 (7th Cir. 1996), the defendant removed a state court foreclosure action to federal court and asserted as a defense that a final state court judgment – entered in another action by a state court other than the one from which the case was removed – upon which the plaintiff based his claims was invalid. In *Wright v. Tackett*, 39 F.3d 155 (7th Cir. 1994), the plaintiff brought a civil rights action in federal court alleging that the defendants – including three state court judges – conspired to deprive the plaintiff of his property without due process in several state court foreclosure cases. In *Fielder v. Credit Acceptance Corp.*, 188 F.3d 1031 (8th Cir. 1999), the class action removed to federal court challenged allegedly unlawful interest awards in state court deficiency judgments and sought an injunction requiring the defendant to amend these judgments. In *Neal v. Wilson*, 112 F.3d 351 (8th Cir. 1997), an attorney removed state court disciplinary proceedings to federal court and asserted counterclaims and third-party claims against several state court judges and other state officials, alleging that the state court proceedings violated his federal constitutional and statutory rights. In *Edwards v. Bank of New York*, 63 Fed. Appx. 445 (10th Cir. 2003), the plaintiff brought claims presenting federal questions in district court seeking review of, and relief from, a state court foreclosure judgment, which the state intermediate appeals court already had affirmed and the state supreme court had declined to review.

Many of the decisions that Ware cites, unlike this case, are paradigmatic *Rooker-Feldman* cases. And all of the cases upon which Ware relies involve materially different circumstances than this case. These cases do not indicate a circuit split, and they suggest no compelling reason for this Court to exercise certiorari jurisdiction in this case.

C. The Eleventh Circuit correctly decided that FleetBoston had standing to remove this case notwithstanding its dissolution.

Ware also contends that FleetBoston lacked standing to remove this lawsuit to federal court because it is a dissolved corporation. (Pet. 18-20) It is well settled, however, that the capacity of a corporation after its dissolution to defend lawsuits is determined by the laws of the state in which the corporation was organized. *See Chicago Title & Trust Co. v. Forty-One Thirty-Six Wilcox Bldg. Corp.*, 302 U.S. 120, 127-29 (1937). FleetBoston is a Delaware corporation, and Delaware law provides that a corporation is continued after its dissolution "for the purpose of prosecuting and defending suits" commenced within three years of the dissolution. 8 Del. Code § 278. FleetBoston was dissolved in July 2004 (Pet. App. 27), and Ware filed this lawsuit in December 2004. (Pet. App. 26-27) At the time Ware initiated his lawsuit, and at the time FleetBoston removed it to federal court, FleetBoston was amenable to suit. The Eleventh Circuit's determination that FleetBoston had standing to remove the case was a correct application of well-settled law, and Ware offers no compelling reason for this Court to exercise its certiorari jurisdiction to consider the question.[8]

8. Ware casts his standing argument in terms of the constitutional standing requirement that a party seeking relief have suffered an "injury in fact." (Pet. 18-19) To the extent that the Article III standing requirements apply at all to a defendant not seeking affirmative relief,

(Cont'd)

D. No compelling reason exists for this Court to exercise certiorari jurisdiction to consider Ware's argument that the dissolution of FleetBoston rendered the removal of this case "moot."

Finally, Ware contends that the removal of this case was "moot" because FleetBoston, a dissolved corporation, lacked "a legally cognizable interest in the outcome of the case." (Pet. 20) It is not apparent, and Ware does not explain, how this contention differs in substance from his standing argument. *Cf. Friends of the Earth, Inc. v. Laidlaw Environ. Servs., Inc.*, 528 U.S. 167, 189-92 (2000) (acknowledging that standing and mootness doctrines are distinct but overlap to some extent). In any event, the mootness argument is as unfounded as it is confusing. At the time FleetBoston removed this case, it was amenable to suit as a matter of Delaware law. *See* 8 Del. Code § 278. Accordingly, FleetBoston certainly had "a legally cognizable interest in the outcome" of a case in which Ware sought – and had fraudulently obtained in state court – a judgment for more than $922 million. Ware's suggestion otherwise is preposterous. There is no compelling reason for this Court to exercise its certiorari jurisdiction to address such a patently frivolous position.[9]

(Cont'd)

it seems apparent that Ware's initiation of a lawsuit against FleetBoston, and his fraudulent procurement of a default judgment for more than $922 million, are adequate "injuries in fact" to give FleetBoston standing to remove.

9. Ware also contends that the removal was "moot" because FleetBoston "had legally consented to the jurisdiction of the Georgia State Courts when it appointed the Georgia Secretary of State to become its agent for all legal service of process concerning any lawsuit." (Pet. 20) Ware does not explain, however, how this would moot the removal of the case, and the explanation is not self-evident. This argument likewise does not merit review in this Court.

CONCLUSION

The Court should deny the petition for writ of certiorari.

Respectfully submitted,

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